IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1675

ANTILLES INDUSTRIES, INC.,

*Petitioner,*

v.

GOVERNMENT OF THE VIRGIN ISLANDS; MELVIN H. EVANS, Governor of the Virgin Islands; STANLEY FARRELLY, Chairman of the Virgin Islands Industrial Incentive Board; and REUBEN B. WHEATLEY, Commissioner of Finance,

*Respondents.*

# BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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## REASONS FOR DENYING THE WRIT

### I. THE QUESTION DECIDED BY THE COURT OF APPEALS IS NOT IMPORTANT.

Rule 19 of the Rules of the Supreme Court of the United States sets forth the considerations governing review on certiorari. Certiorari is to be granted "only when there are special and important reasons therefor." Section 1(b) specifies cases in which a court of appeals "has decided an important . . . territorial question in a way in conflict with applicable territorial law . . ." The question decided by the Court of Appeals is not important for the reason that the tax exemption contract

benefits which the Petitioner sought to acquire by assignment were created under a statute which was repealed in 1961. No other case was filed under that statute, and the question did not recur under the successor statute because it contained a provision which spelled out the conditions under which an assignment could be accomplished.[1] This claim, therefore, is unique and a Supreme Court decision on it can have no precedential value.

## II. THE QUESTION DECIDED IS NOT A TERRITORIAL MATTER OF PURELY LOCAL CONCERN.

The tax revenues of the territory as well as tax exemption and tax subsidy contracts are not only matters which concern the United States Government, their very existence depends upon federal law.

Congress exercised its authority under Section 3 of Article 4 of the Constitution of the United States to make "needful Rules and Regulations" respecting the revenue of this territory on several occasions. Beginning in 1917, the year the territory was purchased, and annually thereafter for almost 40 years, Congress passed appropriation bills to meet deficits in territorial revenues. In 1921 Congress passed a Naval Service Appropriation Act[2] which made the federal income tax applicable to the Virgin Islands and provided that the proceeds be paid into the territorial treasury. This measure reduced somewhat the size of the annual Congressional appropriations to meet territorial revenue deficits. In 1954, in conjunction with revising the Organic Act, Congress amended the Internal Revenue Code[3] to provide for a return of internal revenue collections on rum distilled in the territory and shipped to the United States. The

[1] Petitioner's Brief, p. 6a

[2] 43 Stat. 123; 48 U.S.C. §1397

[3] 68A Stat. 907; 26 U.S.C. §7652(b)



Secretary of the Treasury was directed to return an amount sufficient, except for minor deductions, to match the total territorial revenue collections of the territorial government. Annual Congressional appropriations ceased with the implementation of this new provision in the Internal Revenue Code. The federal concern with territorial revenues was again manifested by a statutory enactment which amended the Internal Revenue Code[4] in order to ratify the reduction in income tax liability provided for in Virgin Islands tax exemption and tax subsidy legislation which had been adopted by the territorial government without federal sanction.

The fiscal condition of the territory is the subject of an annual report by the Government Comptroller, a federal official who cannot be removed or transferred without prior notice to the Congress. The annual report is required to be transmitted to the Secretary of the Interior and to the Congress.[5]

The Revised Organic Act of 1954[6] and the Internal Revenue Code[7] require the Government Comptroller to certify annually to the Secretary of the Interior and the Secretary of the Treasury the total amount of territorial revenues. These certifications are the basis for federal grant-in-aid payments and refunds of certain excise taxes to the territorial government.

Section 28a of the Revised Organic Act[8] provides that all persons whose permanent residence is in the Virgin Islands

> ". . . shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the Treasury of the Virgin Islands . . ."

[4] 74 Stat. 998; 26 U.S.C. §934

[5] 68 Stat. 505; 48 U.S.C. §1599(a),(h)

[6] 68 Stat. 505; 48 U.S.C. §1599(d)

[7] 68A Stat. 907; 26 U.S.C. §7652(b)(3)(A)

[8] 68 Stat. 508; 48 U.S.C. §1642

The above-quoted provision compels the conclusion that a reduction of income tax liability to the territorial government cannot occur independent of an equal reduction in income tax liability to the United States Government.

In view of the foregoing, it must be concluded that a question concerning a reduction of tax liability to the territorial government, which is precisely the kind of question the Court of Appeals decided against the Petitioner, is a matter of substantial federal concern and not a purely territorial question as is contemplated in Rule 19.

## III. THE COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH APPLICABLE TERRITORIAL LAW.

The District Court committed manifest error in stating and applying principles governing the construction of tax exemption statutes and itself failed to follow the applicable local rule. The Court of Appeals, on the other hand, followed local precedent in reversing the District Court.

The situation here is not comparable to that in *Waialua Agricultural Co. v. Christian,* [9] relied on by Petitioner, wherein a circuit court of appeals reversed a territorial court in order to apply "the better rule".

The District Court decision was a "clear departure from ordinary legal principles" in that it applied common law contract principles in a situation for which no precedent has been shown. It applied the common law of contract, as revealed by the American Law Insititute, to resolve a question arising under a unique and short-lived territorial statute - a situation to which the authors of the Restatement declared their statement of principles inapplicable. The authors declared that their restatement of the common law represented "law developed solely by judicial decision but also the law which has grown up from the

[9] 305 U.S. 91 (1938)



application by the courts of generally and long-adopted statutes".[10]

The Court of Appeals correctly stated and applied the universally accepted rule for construction of tax exemption statutes and the majority rule on the transferability of tax exemptions. There is a minority view which holds that exemption from taxation may pass to a grantee of the property to which the exemption attached even through the language of the governing statute is less than absolutely explicit on the point. The Puerto Rico case[11] cited by Petitioner represents the minority view, but it is not helpful in the instant case because no property was transferred to the Petitioner.

The District Court's decision stands alone in support of the proposition that an exemption from taxation, even though unattached to any property, is freely assignable without express legislative sanction. No other decision has been cited in support of that position.

The standard for construction of Virgin Islands tax exemption statutes was expressed by the Chief Judge of the District Court of the Virgin Islands in *Tracy Leigh Development Corp. v. Government of the Virgin Islands*[12] when he declined to supply language which was alleged to have been inadvertently omitted from a tax exemption statute - a theory which administrative interpretation of the statute supported. That decision was affirmed by the Court of Appeals[13] and the Court of Appeals cited [14] its affirmation in reversing the District Court decision in the instant case.

[10] Restatement of Contracts, p. viii (1932)

[11] *Buscaglia, Treas. v. Tax Court,* 66 P.R.R. 670 (1946)

[12] 9 V.I. 527 (D.C. V.I. 1973)

[13] 501 F.2d 439 (3 Cir. 1974)

[14] Petitioner's Brief, p. 5a

## CONCLUSION

Petitioner's brief fails to satisfy any of the three requisites set forth in Section 1(b) of Rule 19 for issuing a writ of certiorari to review a court of appeals reversal of a territorial court decision. Accordingly, the Petition should be denied.

Respectfully submitted,

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